

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN
COURT MINUTES and ORDER

UNITED STATES OF AMERICA

v.

COUNSEL-ONLY STATUS CONFERENCE
(By Telephone)

JOHN D. WHELAN (1)
TINA MONTEZON (2)

Case No. 21-cr-0005

HONORABLE BRETT H. LUDWIG presiding
Proceeding Held: 11/29/22
Deputy Clerk: Julie D.

Time Called: 10:05 a.m.
Time Concluded: 10:36 a.m.
Tape: 71

Appearances:

UNITED STATES OF AMERICA by:	Kevin C. Knight Julie F. Stewart
JOHN D. WHELAN by:	Meggan Sullivan
TINA MONTEZON by:	Jonathan C. Smith

The Court summarized the procedural history of the case and noted Defendant Whelan's notice of intention to raise insanity defense filed on October 31, 2022. Defense counsel for Defendant Whelan retained Gerald Shiener, M.D., a psychiatrist, who evaluated Defendant Whelan and generated findings that counsel for Defendant Whelan contends necessitated notice pursuant to Fed. R. Crim. P. 12.2. Dr. Shiener's report has been shared with the government but not the Court. On November 11, 2022, the government filed a combined motion for competency hearing and psychiatric examination (ECF No. 67). The parties reported that they are in agreement that an additional competency evaluation of Defendant Whelan is required but are at an impasse as to whether the evaluation should be conducted by the Bureau of Prisons with Defendant Whelan in custody as an inpatient (government's position) or outpatient (defense counsel's position). The parties also have not reached agreement on a suitable professional to conduct the evaluation. The Court set a briefing schedule and hearing date on the issue and in the interim, encouraged the parties to confer in order to reach agreement. The Court removed the pretrial and trial dates from the Court's calendar without objection from any party. The Court made a finding under the Speedy Trial Act.

For the reasons stated on the record, the Court orders as follows:

IT IS ORDERED that the final pretrial conference scheduled for February 17, 2023, the trial scheduled for February 27, 2023, and any corresponding dates related to a final pretrial report are removed from the Court's calendar and will be rescheduled as necessary for a later date.

IT IS FURTHER ORDERED that the government file a brief in support of an in-custody inpatient evaluation of Defendant Whelan to be conducted by the Bureau of Prisons on or before **December 6, 2022**. Defendant Whelan's response to the government's position and any legal support for an outpatient evaluation is due on or before **December 13, 2022**. The court will conduct a hearing on **December 20, 2022, at 2:00 p.m.** at the U.S. Courthouse, 517 East Wisconsin Ave., Courtroom 320, Milwaukee, Wisconsin. Parties need not appear at the hearing. The Court will defer to the parties and their briefing on whether evidence (or a proffer) need be presented to support or in opposition of their positions.

IT IS FURTHER ORDERED that any period of delay resulting from the examination and evaluation of Defendant Whelan is excluded from computation under the Speedy Trial Act.

IT IS FURTHER ORDERED that Defendant Whelan's Motion for Order to Excuse Attorney Presence or in the Alternative to Reset Status Conference Set for November 29, 2022 (ECF No. 70) is **Granted**. Attorney Meggan Sullivan is permitted to appear on behalf of Defendant Whelan for the November 29, 2022, status conference. If Attorney Sullivan plans to continue to appear for Defendant Whelan in this matter and at the December 20, 2022, hearing, she must file the necessary papers in order to be admitted to the Eastern District of Wisconsin and sufficiently in advance of the December 20, 2022, hearing.

Dated at Milwaukee, Wisconsin on November 29, 2022.

s/ Brett H. Ludwig

BRETT H. LUDWIG
United States District Judge